

**REMARKS**

Reconsideration of this application is respectfully requested in view of the following remarks.

By the foregoing amendment, claim 24 has amended. No new matter has been added. Thus, claims 1-24 are currently pending in the application and subject to examination.

**I. Double Patenting**

In the Office Action dated August 17, 2007, the Examiner provisionally rejected claim 19 on the ground of nonstatutory obviousness type double patenting as being unpatentable over claim 21 of co-pending Application No. 10/673,156. A terminal disclaimer is filed herewith. Therefore, the Applicants respectfully request the withdrawal of this provisional rejection.

The Examiner rejects claims 1 and 19 on the ground of nonstatutory obviousness type double patenting as being unpatentable over claim 3 of U.S. Patent No. 7,016,956 to Dobbins et al. ("Dobbins"). The Applicants respectfully traverse this rejection.

The Applicants submit that Dobbins does not disclose or suggest a method of according preferred transport to a content, the method including at least the combination of identifying a content aware node, the node being contained in the transmission path of the content; identifying the content for transmission; determining transport parameters based on the identified node and the identified content; and providing the identified content for transmission to a user requested location, as recited in claim 1.

The Office Action asserts that the claimed content aware node contained in the transmission path of the content is the subscriber. The Applicants respectfully submit that a subscriber is not a content aware node in the transmission path as described in the present application.

For example, paragraph [0162], describes a content server node and its connection via private circuit, tunneling mechanism, etc. to the subscriber. After the description in paragraph [0163], the inserted paragraph from the response on May 30, 2007, describes "a content aware node is a node capable of identifying a content tag and using a content tag to determine distribution restrictions." Consistent with this description, the figures show the transmission path including electronic components not the user/subscriber.

Therefore, for at least this reason, the Applicants submit that a content aware node, as described in the present invention is an electronic component in the transmission path of the content and not a user/subscriber.

For at least this combination of reasons, the Applicants submit that amended claim 1 is allowable over the cited art. For similar reasons, the Applicants submit that claim 19 is likewise allowable. As claims 1 and 19 are allowable, the Applicants submit that claims 2-18 and 20-24, which depend from allowable claims 1 and 19, are therefore also allowable.

## **II. Rejections Under 35 U.S.C. § 102(b)/103(a)**

Claims 1-6, 9-14, 17-20, and 22-24 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Publication No. 2002/0029260 to Dobbins ("Dobbins"). Under 35 U.S.C. § 103(a), claims 7-8 are rejected as being unpatentable over Dobbins in view

of U.S. Patent No. 6,757,283 to Yamanaka ("Yamanaka"); claims 15 and 16 as being unpatentable over Dobbins in view of U.S. Publication No. 2002/0099842 to Jennings ("Jennings"); and claim 21 as being unpatentable over Dobbins in view of U.S. Publication No. 2002/0059120 to Milton ("Milton"). The Applicants respectfully traverse these rejections as follows.

The Applicants note that U.S. Publication No. 2002/0029260 to Dobbins ("Dobbins") is the publication of U.S. Patent No. 7,016,956 to Dobbins et al. ("Dobbins"), discussed above in the section on double patenting.

Yamanaka, Jennings, and Milton fail to cure the deficiency described in Dobbins above.

Thus, as described above, the Applicants submit that claims 1-24 are allowable over the cited art.

#### CONCLUSION

For all of the above reasons, it is respectfully submitted that the claims now pending patentability distinguish the present invention from the cited references. Accordingly, reconsideration and withdrawal of the outstanding rejections and an issuance of a Notice of Allowance are earnestly solicited.

Should the Examiner determine that any further action is necessary to place this application into condition for allowance, the Examiner is encouraged to telephone the undersigned representative at the number listed below.

In the event this paper is not considered to be timely filed, the Applicants hereby petition for an appropriate extension of time. The fee for this extension may be charged to our Deposit Account No. 01-2300. The Commissioner is hereby authorized to charge

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any fee deficiency or credit any overpayment associated with this communication to  
Deposit Account No. 01-2300 with reference to Attorney Docket No. 026215-00004.

Respectfully submitted,

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